IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2002

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

Writ Petition No.20190 of 1994
and
WPMP.No.30764 of 1994

1. K.V.Subburathanam ..... Petitioner

Versus

1. The Collector of Nilgiris
Udhagamandalam, The Nilgiris
District.

2. The Tahsildar
Udhagamandalam Taluk
Udhagamandalam, The Nilgiris
District.

3. Smt.Kempammal
Summer House
Udhagamandalam,
The Nilgiris District. Respondents

Prayer: Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, as stated therein.

For Petitioner : Mr. N.S.Nandakumar

For Respondents : Mr. P. Chandrasekaran
AGP for R1 and R2.
Mr. K. Rakhunathan for R3

:ORDER
The residents of Summer House Colony, Udhagamandalam submitted a representation dated 21.07.1993 to the Collector stating that the right of way enjoyed by them through the Summer House in S.No.4077 of Udhagamandalam town connecting the S.No.4080 and 4076 has been denied by the third respondent herein by putting up fencing and requested to restore the pathway. The District Revenue Officer after affording opportunity to the said residents and the third respondent passed an order dated 18.04.1994 directing the Tahsildar, Udhagamandalam to restore the pathway through S.No.4077 to the residents of Summer House Colony.

2. Pursuant to the said order, the residents of Summer House Colony sent a representation dated 10.05.1994, to the Tahsildar, Udhagamandalam and representations dated 09.06.1994, 20.06.2994 and 08.08.1994 to the District Collector/first respondent herein to implement the said order and to restore the pathway, but not restored. The petitioner herein was a retired District Revenue Officer who was also one of the residents of Summer House Colony submitted similar representation dated 30.09.1994 to the first and second respondents, District Revenue Officer, Assistant Collector, Coonoor, but no order has been passed to restore the pathway. Hence, the present writ petition to issue a writ of mandamus directing the respondents to implement the order of the District Revenue Officer dated 18.04.1994 is filed.

3. Mr.N.S.Nandakumar, learned counsel appearing for the petitioner argued that the District Revenue Officer after elaborate enquiry and after personal spot inspection passed the order of restoration of pathway under Section 22 of the Tamil Nadu Survey and Boundaries Act, 192 3, which is statutory in nature and it has to be implemented in strict terms by the respondents. The learned counsel further argued that as against the said order dated 18.06.1994, the third respondent has not filed any appeal, with the result it become final. The third respondent has no authority or legal right to block the pathway. Since the third respondent failed to restore the said pathway, the Summer House Colony people have to walk for a longer distance to reach the road in S.No.4088 and 4076. According to the learned counsel, there is no other alternative remedy and hence prayed for the issuance of a writ of mandamus.

4. The respondents 1 and 2 filed a common counter affidavit which was adopted by the third respondent. Originally, the residents of Summer House Colony were using the open space available in the Breeks School as pathway to reach the main road which was fenced by the School authorities. After the closure by the school, the residents have been using a road which branches off from main road, as well as the Collectorate junction. The said road was later black-topped by the Udhagamandalam Municipality and it is provided for the exclusive use of the residents of the Summer House Colony. The land in S.No.4077 belonged to the third respondent. The residents of Summer House Colony were also originally used S.No.4077 as pathway to reach the main road, which was blocked by her. The petitioner and some of the residents of Summer House Colony joined together and claim the pathway right over the third respondent property instead of using the said black-topped motorable road. The RDO has passed an order da ted 18.04.1994 declaring the right of pathway over the patta lands. The third respondent objected to that on the ground she has purchased the property in the year 1957, but no pathway was mentioned in her sale deed. According to the third respondent, the motorable black-topped road now maintained by the Municipality also goes up to the Summer House Colony. According to respondents 1 and 2, the pathway claimed through the third respondent's property is not at all required, since a motorable road is provided from the Summer House Colony to the main road.

5. Now, we look into the relevant Sections of the Act.
22. "Power to enter upon, examine and clear obstruction on lands- For the purposes of any survey, inquiry or other proceedings under this Act, the

survey officer of the District Collector or any of the subordinates of such officers shall have power to enter upon, examine and measure any land under survey and to clear by cutting down or removing any trees, jungle, fences, standing crops or other material obstructions, the boundaries or other lines the clearance of which may be necessary for the purpose of the survey."
24. "Reference to arbitration - (1) The District Collector or the survey officer may with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary. (2) The decision of the District Collector or the survey officer passed in accordance with such award shall be conclusive between the parties to such arbitration and those claiming under them."
The object of the said act is for demarkation and survey of boundaries and to the settlement of boundary disputes. The decision of a Survey Officer or the planting of stones in accordance with it in proceedings under the Madras Survey and Boundaries Act does not ipso facto dispossess any party nor make any legal break in existing possession.
Section 22 empowers the Officer to enter upon, examine and clear obstruction on lands for the purpose of any survey enquiry or other proceedings under this Act.
Section 24 empowers the District Collector or the Survey Officer may with the consent of all parties concerned, refer to arbitration any dispute as to a boundary.
It is not open to the Revenue Officials to pass an order declaring the right of pathway of the public on the patta lands under this Act. In the order dated 18.04.1994, the District Revenue Officer exceeded his jurisdiction declaring right of pathway on the third respondent patta lands. The DRO failed to consider the sale deed dated 11.01.1957 executed in favour of the third respondent, wherein no such pathway is mentioned. Neither the petitioner nor the residents of Summer House Colony produced any valid evidence to show the pathway in S. No.4077 had been in their use continuously. Admittedly, the petitioner and other residents of Summer House Colony had been using the lands belonged to Breeks School as a short cut way to reach the main road which was blocked by putting up fence. Thereafter they attempted to use the third respondent patta land which was rightly prevented by her as unsafe. When an alternative main road maintained by the Municipality is very much available to the petitioner, claiming right of the use of the land of the third respondent is unjustifiable.

6. As rightly pointed out by the learned counsel for the third respondent that when there is a motorable tar-road available for the petitioner and other residents of the Colony, claiming right of pathway in the middle of the third respondent's patta lands is unjustifiable. The argument of the learned counsel for the petitioner that under Section 22 of the Tamil Nadu Survey and Boundaries Act, 1923, the Revenue Officials are vested with the right to declare any portion of the patta land as pathway is rejected. Hence, the implementation of the said order dated 18.04.1994 sought for in this writ petition cannot be granted.

7. With the result, the writ petition is liable to be dismissed and accordingly it is dismissed. Consequently, WMP.No.30764 of 1994 is closed. No costs.

Index: Yes
Website: Yes
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To
1. The Collector of Nilgiris
Udhagamandalam, The Nilgiris
District.

2. The Tahsildar
Udhagamandalam Taluk
Udhagamandalam, The Nilgiris
District.

A.KULASEKARN,J.
Ksr.

Order in
W.P.No.20190 of 1994
and
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